



November 10, 1992

wais material may be subject to the confidentiality provision cal VIA FAX--202-326-2050 section 74 (h) of the Clayton Acr which restricts release under +>> Federal Trade Commission of Information Act Premerger Notification Office

Washington, DC 20580

Re: Our File No

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Dear Ms. Ovuka:

Nancy Ovuka, Esq.

Further to our telephone conversation yesterday, this letter requests an informal interpretation from the staff as to the applicability of \$\$7A(c)(2) and 7A(a)(3)(B) of the Clayton Act, as amended (the "Act"), to the acquisition of a lease portfolio consisting of

FACTS

Our client, a company which is a "Purchaser"), is intending to subsidiary of a of another acquire the company (seller"). which is also a suppldlary of a The portfolio consists of or opendations. These are

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The Secured Loans

In the case of the Secured Loans, Seller acts as lender to which are the title holders to the In question. The equipment is by those equipment to end-users as The Secured Loans are typically evidenced by non-recourse promissory notes or other evidence of debt, security agreements perfected by Uniform Commercial Code ("UCC") filings with respect to both the and the assignments of to Seller, acknowledged by the in question. The payments by the to the equipment under the leases generally match the payments to be made by those to Seller under the loans, and in most cases the pay Seller directly.

Title to the is held by the but the are responsion for and control the the event of a default under the loan by an (who is Seller's obligor), Seller has the right to demand make payment directly to Seller (if the is not already paying Seller directly), and Seller is entitled to exercise its remedies under the UCC with respect to the which, however, remains subject to the

Purchaser will acquire from Seller the debt owed by to Seller and will assume Seller's security interests in the and the

The Financing Leases

In the case of the Financing Leases, Seller is the title holder to the is leased to the endusers of the responsible for and control the and insurance. In the event of a default in payment, Seller may terminate a and repossess the question.

> Purchaser will acquire Seller's title to the subject to the Financing Leases.

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Value of Secured Loans and Financing Leases

The value of the subject to the Secured Loans and the Financing Leases exceeds \$15 million in the aggregate. However, the value of the the Financing alone may be less than \$15 million.

QUESTION PRESENTED

Assuming that the value of the subject to the equals less than \$15 million, is the acquisition of the Secured Loans and the Financing Leases exempt under \$\$7A(c)(2) and 7A(a)(3)(B) of the Act.

DISCUSSION

Section 7A(c)(2) and the Secured Loans

With respect to the Secured Loans, under \$7A(c)(2) of the Act, acquisitions of bonds, mortgages, deeds of trust, or other obligations which are not voting securities are exempt from the Act's notification requirements. Under \$7A(a)(3)(B), acquisitions which aggregate less than \$15 million of an issuer's assets are not subject to the Act's notification requirements.

The staff has previously taken the position that the acquisition of a leveraged is not exempt from the the Act under \$7(A)(c)(2) on the ground that the acquisition of the lease is tantamount to the acquisition of the saset. See ABA Premerger Notification Practice Manual, Item 25. However, it is unclear whether the staff in taking that position has been presented with the situation where the portfolio consists both of secured loans and financing leases. The Secured Loans should be distinguished from the Financing Leases on a number of grounds.

First, in the case of the Secured Loans, Purchaser does not acquire title to the equipment. The Purchaser only acquires a loan which is secured by a security interest in the equipment and the to which it is subject. Purchaser cannot acquire title to the subject to a unless its borrower (the

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^{1.} We are currently uncertain of the actual value of the subject to the since our review is not get complete but believe it may be well less than \$15 million.

defaults and, in exercising its UCC remedies, Purchaser acquires and retains title to the account of its loan.

Second, the purchase of the Secured Loans is very similar to the purchase of commercial loan accounts and of mortgages which the staff has previously deemed exempt from the Act. See ABA Premerger Notification Practice Manual, Item 26. As with commercial loans and mortgages, the Purchaser will have no right to proceed against the assets which secure its debt unless there is a default in payment to it. If it does proceed, Purchaser must act in a commercially reasonable manner under the UCC. (UCC \$9-504) Therefore, it should be concluded that in acquiring the Secured Loans, Purchaser is buying "obligations" which are exempt from the notification requirements under \$7A(c)(2) of the Act.

\$7A(a)(3) and The Financing Leases

with respect to the previously taken the position that the acquisition of the lessor's position in a second would be deemed the acquisition of the underlying to the work, the value of the subject to the here may not reach the \$15 million threshold set by \$/A(a)(3)(B).

Under 15 CFR \$801.21(b), the value of the Secured Loans as "obligations" is not to be aggregated with the value of the threshold under \$7A(a)(3)(B) has been met:

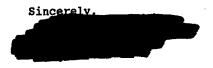
Neither voting or nonvoting securities nor obligations referred to in section 7A(c)(2) shall be considered assets of another person from which they are acquired.

Therefore, in the event the value of the equipment subject to the alone does not equal \$15 million, the acquisition of the subject to the Act's notification requirements.

^{2.} The usual practice of most secured lenders of however, under the UCC is to sell the either public auction or private sale and to retain the proceeds on account of the debt.

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Thank you for your kind consideration. We look forward to receipt of the staff's informal interpretation as soon as practicable. In the meantime, you should feel free to telephone me with any questions or comments.



11/13/92

Called Both "secured loans" and

"fexaxcexa leaves" are lease fexaxeeing

Fransactions. In "secured loans", willie

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security exterest in leased equipment.

Question: As extere lease portrolis of

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